

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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August 21, 2023

The Honorable Lina M. Khan, Chair
The Honorable Rebecca K. Slaughter, Commissioner
The Honorable Alvaro Bedoya, Commissioner
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chair Khan and Commissioners Slaughter and Bedoya,

The Committee on Oversight and Accountability wrote to you on June 1, 2023, in response to the resignation of Commissioner Wilson for allegations that the Federal Trade Commission (FTC) has abused its power under Chair Lina Khan.¹ The FTC's decision to send agency officials to Europe to help implement and enforce the European Union's (EU) Digital Markets Act under the guise of "international cooperation" undermines U.S. economic interests.² Several other actions the FTC has taken in conjunction with EU agencies indicate an alarming pattern of FTC exporting its authority to Europe to achieve FTC's political goals. The Committee is following up for documents and information regarding FTC's engagement with officials at foreign governing bodies.

The EU's Digital Markets Act aims to increase competition in the European tech market space but does so by targeting American online platforms under the designation as "gatekeepers."³ The EU's goal is to make European tech more competitive versus their American counterparts by subjecting the gatekeepers to greater scrutiny and burdens than their competitors. Specifically, the gatekeepers will be forced to provide third-party access to hardware, software, and operating systems, as well as require gatekeepers to share intellectual property.⁴ The Digital Markets Act will impact U.S. tech companies' transatlantic business with their customers in the hundreds of millions of dollars. The Center for Strategic and International Studies (CSIS) studied the impact that the Digital Markets Act and another EU regulatory action,

¹ Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Lisa Khan, et al., Federal Trade Commission (June 1, 2023).

² *FTC, Justice Department, and European Commission Hold Third U.S.- EU Joint Technology Competition Policy Dialogue*, Federal Trade Commission (Mar. 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-justice-department-european-commission-hold-third-us-eu-joint-technology-competition-policy>.

³ Colin Wall and Eugenia Lostri, Center for Strategic and International Studies, *The European Union's Digital Markets Act: A Primer* (Feb. 8, 2022), <https://www.csis.org/analysis/european-unions-digital-markets-act-primer>.

⁴ *Id.*

the Digital Services Act, and estimated that the impact on U.S. tech companies could be between \$22 and \$50 billion in new compliance and operational costs.⁵

While this is a European protectionist policy, competitors based outside of Europe will also benefit. This narrow discrimination against U.S. tech could be especially beneficial to Chinese tech companies because Chinese companies are most able to step in and offer alternative tech services. CSIS surveys that found 16 percent of European companies could switch from U.S. tech to Chinese competitors because of the costs associated with the new regulations.⁶ Increasing the EU digital market's reliance on Chinese tech is not in Americans' interests. Chair Khan was given an opportunity to address these very concerns during congressional testimony on April 18, 2023 but avoided doing so.⁷ Instead the Chair promoted FTC's actions as "international cooperation."⁸ However, other agencies with more experience in international competition issues have voiced concerns regarding the EU's policies. The State Department has shared concerns regarding the Digital Markets Act with the EU and the Biden Administration has said it opposes "efforts specifically designed to target only U.S. companies."⁹ The Office of the United States Trade Representative published a report earlier this year that categorizes the Digital Markets Act as a barrier to digital trade.¹⁰ While the Committee recognizes longstanding cooperation between the FTC and EU counterparts,¹¹ the FTC should not be using this framework to accomplish abroad what the agency cannot accomplish in its own jurisdiction.

A set of emails released earlier this year as the result of a Freedom of Information Act (FOIA) request raises concerns about FTC improperly consulting with foreign officials to block the Illumina-Grail merger.¹² The communications show that the FTC reached out to European antitrust regulators and shared documents related to Illumina-Grail.¹³ A subsequent series of announcements by European regulators and the FTC demonstrates similar designs to stop the merger.¹⁴ The FTC fought the FOIA request for nearly a year before producing heavily redacted emails without legitimate justification.¹⁵ However, even with the significant redactions the

⁵ Kati Souminen, Center for Strategic and International Studies, *Implications of the Europeans Union's Digital Regulations on U.S. and EU Economic and Strategic Interests* 1 (Nov. 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122_EU_DigitalRegulations.pdf?VersionId=iuE19KteAl_SKhjPCEWN8LlvqqORV02X.

⁶ *Id.*

⁷ *Innovation, Data, and Commerce Subcommittee Hearing: "Fiscal Year 2024 Federal Trade Commission Budget"*, (Apr. 18, 2023).

⁸ *Id.*

⁹ Foo Yun Chee, *EXCLUSIVE U.S. warns against IP, trade secret risks in draft EU tech rules - paper*, Reuters (Nov. 10, 2021).

¹⁰ *2023 National Trade Estimate Report: Foreign Trade Barriers*, Office of the U.S. Trade Representative (Mar. 31, 2023).

¹¹ *United States and European Union Antitrust Agencies Issue Revised Best Practices for Coordinating Merger Reviews*, Federal Trade Commission (Oct. 14, 2011).

¹² U.S. Chamber Staff, *FTC Records Related to the FTC's Attempt to Block the Illumina-Grail Transaction*, U.S. Chamber of Commerce (Feb. 23, 2023).

¹³ *Id.*

¹⁴ U.S. Chamber Staff, *the FTC and Illumina: When Cooperation Crosses the Line*, (Feb. 21, 2023), <https://www.uschamber.com/assets/documents/Illumina-Grail-FOIA-Background.pdf>.

¹⁵ *Id.*

communications are reason to question whether the FTC is working in secret to achieve its ideological goals. This lack of transparency is not good government.

The FTC's website states that the agency's "mission is protecting the public from deceptive or unfair business practices and from unfair methods of competition."¹⁶ The FTC should act in a manner that is consistent with its mission and promotes the most innovative tech industry in the world. The U.S. tech sector is extremely valuable because it fosters an ecosystem that drives investments in startups, creates new products and jobs, and increases the standard of living in the U.S. and abroad.

To assist the Committee in its ongoing oversight of whether the FTC has subverted U.S. due process rights by improperly coordinating with foreign competition officials, please provide the following documents and information from the in the timeframe of January 20, 2021 to present, by September 4, 2023:

1. All communications with European governing bodies, including but not limited to the European Commission and the United Kingdom, regarding the Digital Markets Act, proposed or current antitrust regulation, "gatekeepers," "consumer protection," competition among online or digital platforms, "blacklist practices," or "whitelist practices."
2. Internal emails, memos, records related to phone calls, meeting agendas, meeting minutes, calendar entries, and any other electronic messages as well as communications with other federal agencies and the White House, regarding the Digital Markets Act, the European Commission, or gatekeepers.
3. All itineraries and accompanying records and documents of FTC officials traveling abroad on official business in the United Kingdom and the European Union, including calendars with the dates and location of the trip, the purpose of the trip, as well as notes and minutes from the meetings, lists of the participants of the meetings, and any communications related to the trip or travel, all documents related to preparation for the trip and preparation for meetings during the trip.

To arrange for the delivery of responsive documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority staff at (202) 225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

¹⁶ *Mission*, Federal Trade Commission (Mar. 10, 2021), <https://www.ftc.gov/about-ftc/mission>.

Chair Khan and Commissioners Slaughter and Bedoya
August 21, 2023
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Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a large, prominent "J" and "C".

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability